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FREEDOM RING COMMUNICATIONS, LLC
STLD D/B/A NORTHLAND CALLING CHOICE
ST LONG DISTANCE, INC.
Competitive Local Exchange Carriers

TELIGENT SERVICES, INC.
SPRINT COMMUNICATIONS COMPANY, L.P.
ASC TELECOM, INC.
Competitive IntraLATA Toll Providers

1998 and 1999 Annual Report Filings

Motions for Confidentiality

O R D E R N O. 23,530

July 6, 2000

Freedom Ring Communications, L.L.C. (Freedom Ring),
STLD d/b/a Northland Calling Choice (STLD) and ST Long
Distance, Inc. (ST Long Distance), which are competitive local
exchange carriers (CLECs), and Teligent Services, Inc.
(Teligent) and Sprint Communications Company, L.P. (Sprint)
and ASC Telecom, Inc. (ASC Telecom), which are competitive
intraLATA toll providers (CTP), filed with the New Hampshire
Public Utilities Commission (Commission) their 1998 and/or
1999 Annual Reports (together, the Annual Reports). The
Annual Reports are required for CLECs by New Hampshire
Administrative Rule Puc 1308(d) and, for CTPs by Order 22,473
in DE 90-002 dated January 6, 1997, and by Puc 411.08

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(effective May 23, 2000).

The Annual Report filings addressed by this Order are summarized as follows:

Freedom Ring filed its 1998 Annual Report on April 2, 1999 and its 1999 Annual Report March 30, 2000;

ST Long Distance and STLD filed their respective 1998 Annual Reports on April 17, 1999;

Teligent filed its 1999 Annual Report on or about March 30, 2000.

Sprint filed its 1999 Annual Report on April 3, 2000.

ASC Telecom filed its 1999 Annual Report on March 31, 2000.

The Petitioners each filed concurrently with their respective Annual Reports, a letter or motion (together, the Motions) requesting confidential treatment of all or a portion of the information contained in the respective Annual Report¹. Sprint filed concurrently with its Annual Report a written

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As this Motion was filed prior to the adoption of Laws of 1999, Chapter 154, it is therefore decided under the previous statute. Chapter 154 added new subdivision RSA 378:43, and grants an exemption for certain telephone utility information from the definition of public records for purposes of RSA 91-A (the right-to-know law), effective August 24, 1999.

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request for confidential treatment and on June 23, 2000, filed a more specific motion and affirmation supporting its request. Freedom Ring, Teligent, ST Long Distance and STLD specifically cite to Puc 204.06 as the basis for relief. Sprint and ASC Telecom filed their motions pursuant to RSA 378:43 and make the affirmations described in that statute section.

Pursuant to Puc 204.05(b), documents submitted to the Commission accompanied by a motion for confidentiality shall be protected as provided in Puc 204.06(d) until the Commission rules on the motion for confidentiality.

The information for which the Petitioners seek protection includes New Hampshire revenue by type and in total, number of New Hampshire customers, number of presubscribed New Hampshire access lines, fiber and copper cable mileage in New Hampshire, and its balance sheets and income statements for New Hampshire operations (the Information). The Petitioners request that the Information be designated "confidential, commercial, or financial information", within the exemption provided by RSA 91-A:5,IV.

In their motions the Petitioners generally aver that: (1) disclosure of their portion of the Information would provide competitors with access to information that is likely

to result in competitive harm to the respective Petitioner;
(2) the Information is not general public knowledge, nor has it been published elsewhere and the Petitioner has taken measures to prevent dissemination of their respective portion of the Information in the ordinary course of business; and (3) the information pertains to the provision of competitive services.

The Commission has reviewed the Information. As in prior cases cited below, the Commission must weigh the public interest in disclosure under RSA 91-A against the reasonable expectation of the utility in privacy of sensitive financial information.

The provision of local exchange service in New Hampshire is not truly competitive at this time, given the small portion of market share occupied by new entrants into the local exchange service market. A CLEC can reasonably argue that disclosing vital financial information gives the incumbent local exchange carrier (ILEC), and other potential or actual CLECs against whom it competes, insight into its sensitive business position.

As to the Motions of the CTPs, since the market place is more competitive for provision of CTP service, there

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is more choice among providers, and the public need to have access to the records of a CTP is less compelling.

ST Long Distance and Teligent also each state in their petitioning letters that their respective Annual Reports contain trade secrets.

RSA 350-B:1,IV sets forth the statutory definition of "trade secret", as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

These Petitioners have not shown in their respective filings that either Annual Report "[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use", as required by the definition of trade secret set forth above. These Petitioners have also not made a factual showing

that its competitors could obtain economic value from the disclosure or use of their annual reports.

Even though we find that the Information does not constitute a trade secret under RSA 350-B:1,IV, it may still qualify for protective treatment under the "confidential, commercial, or financial information" standard of RSA 91-A:5,IV.

Another issue, however, bears upon the CLECs' and CTPs' requests. The revenue information which each CLEC seeks to protect is used by the Commission to calculate the utility assessment required by RSA 363-A:2. Since revenue is the basis for calculating the utility assessment, in any situation in which the Commission might grant confidential treatment to revenue information, the public utility seeking protection must understand that the Commission cannot then treat the utility assessment valuation as confidential. This result would be contrary to RSA 363-A:2, which requires the Commission to make a list showing the amounts due from each utility and to certify that list.

Each Petitioner must therefore understand that even if its requested relief is granted, a competitor might be able to discern from the amount of its utility assessment, which

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will remain public, a range within which that CTP's or CLEC's total revenue figure for the year falls.

The Commission finds that the Information contained in the filings for which confidential treatment is sought meets the requirements of Puc 204.06(b) and (c). Based on the representations contained in each respective Motion, under the balancing test we have applied in prior cases, See e.g., Re New England Telephone Company (Auditel), 80 NHPUC 437 (1995); Re Bell Atlantic, Order No. 22,851 (February 17, 1998); Re EnergyNorth Natural Gas, Inc., Order No. 22,859 (February 24, 1998), we find that the benefits of non-disclosure in this case do outweigh the benefits to the public of disclosure. The Information should be made exempt from public disclosure pursuant to RSA 91-A:5,IV and Puc 204.06. As discussed above, however, each Petitioner must understand that the amount of its utility assessment, calculated under RSA 363-A:2, will remain public.

The scope of the material granted protective treatment is limited to material identified by the respective petition in its motion for relief, material required to be included in the annual report filing, material that pertains to the New Hampshire operations of the petitioner, and

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material for which the petitioner has made the representations required by RSA 378:43, namely that the records are not general public knowledge or published elsewhere, that the petitioner has taken measures to avoid dissemination of the material in the ordinary course of business and that the information pertains to the provision of competitive services or constitutes a trade secret or other specific confidential information not reflected in tariffs of general application, as cited in RSA 378:43.

In the future, if any CLEC or CTP requests confidential treatment of its annual report, it must provide in writing concurrently with its annual report filing the affirmations required by RSA 378:43 or submit a motion for confidentiality pursuant to Puc 204.06.

Based upon the foregoing, it is hereby

ORDERED, that the Motions for Confidentiality listed herein are GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

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By order of the Public Utilities Commission of New
Hampshire this sixth day of July, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary